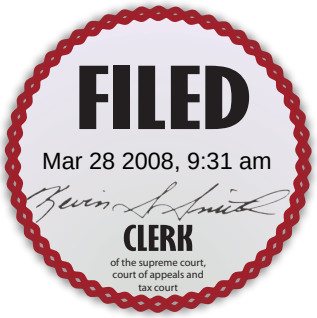

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IN THE COURT OF APPEALS OF INDIANA

THOMAS B. HOLLOWELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A03-0711-CR-534
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Robert E. Kirsch, Judge
The Honorable Stephen S. Spindler, Judge
Cause No. 57D01-0607-FD-144

March 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant Defendant Thomas Hollowell appeals the trial court's imposition of a maximum three-year sentence following his conviction pursuant to a guilty plea for Pointing a Firearm as a Class D felony.[1] Hollowell claims the sentence was inappropriate in light of his character and the nature of his offense. We affirm.

FACTS

According to the factual basis entered at the time of Hollowell's plea, on July 9, 2006, at approximately 9:30 p.m., Hollowell, who was in the front yard of his residence at 6710 West 600 North in Noble County, pointed a loaded Colt .45 revolver at a passing vehicle with the knowledge that at least one person was inside the vehicle. On July 10, 2006, the State charged Hollowell with pointing a firearm. On December 11, 2006, the State filed an information alleging Hollowell to be a habitual offender. On June 25, 2007, Hollowell pled guilty to pointing a firearm. Following the September 25, 2007 sentencing hearing, the trial court dismissed the habitual offender information pursuant to the State's motion and entered judgment of conviction on Hollowell's guilty plea. In sentencing Hollowell to the maximum three-year sentence in the Department of Correction for his Class D felony, the trial court determined that the aggravator of Hollowell's criminal history outweighed the mitigator of his admission of guilt. This appeal follows.

[1] Ind. Code § 35-47-4-3 (2006).

DISCUSSION AND DECISION

Hollowell's sole challenge on appeal is to the appropriateness of his sentence. Article VII, Sections 4 and 6 of the Indiana Constitution "'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

We first observe that under Indiana Code section 35-50-2-7 (2006), the starting point for a Class D felony is one and one-half years, which may be reduced to six months or enhanced to three years according to the trial court's discretion. With respect to the nature of the instant offense, Hollowell, who was admittedly intoxicated, pointed a loaded gun at a vehicle as it passed by his house because he found the vehicle's headlights to be bothersome. The act of pointing a loaded gun, while in an impaired state of mind, at a moving vehicle containing an unknown number of occupants is certainly

egregious. Furthermore, this offense was alcohol-related, not unlike much of Hollowell's long criminal history.

With respect to Hollowell's character, we acknowledge that Hollowell pled guilty in the instant case, which reflects positively upon his character. We further note, however, that the State dismissed its habitual offender information following his plea, suggesting the plea may have been as much a strategic choice as a character-enhancing effort at taking responsibility. In any event, Hollowell's character is tarnished by his extensive adult criminal history involving multiple alcohol-related convictions, among them three felony convictions for driving while intoxicated, four misdemeanor convictions for driving while intoxicated, and a misdemeanor conviction for public intoxication, as well as an additional felony conviction for entering to commit a felony. Hollowell's criminal history spans the past four decades, and the instant offense, not unlike this history, similarly involves Hollowell's placing others' lives directly at risk through his alcohol use. We therefore conclude that the nature of the instant offense is sufficiently egregious and Hollowell's character is sufficiently lacking such that his three-year sentence is not inappropriate, regardless of whether an even worse scenario could be imagined. *See Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002) (observing that class of offenses and offenders warranting maximum punishment encompasses a considerable variety of offenses and offenders).

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.